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EXCEPTION

BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AL CORP COMMISSION
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IN THE MATTER OF THE NOTICE OF
PROPOSED RULEMAKING REGARDING
ELECTRIC ENERGY EFFICIENCY RULES

) DOCKET NO. RE-00000C-09-0427

) **EXCEPTIONS OF TUCSON**
) **ELECTRIC POWER COMPANY**
) **AND UNS ELECTRIC, INC.**
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Tucson Electric Power Company ("TEP"), and UNS Electric, Inc. ("UNS Electric"), collectively the "Companies", through undersigned counsel, hereby file their exceptions to the Recommended Opinion and Order ("ROO") for the Proposed Energy Efficiency Rules ("EE Rules"), submitted in this docket by the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"). The ROO recommends that the Commission proceed with a rulemaking docket to promulgate the EE Rules, as drafted by the Staff. The Companies do not oppose the rulemaking proceeding. However, to the extent that the EE Rules do not reflect the provisions and comments provided to the Staff during the workshop process, the Companies provide the following exceptions to the ROO.¹

The EE Rules propose a regulatory framework whereby utilities will be required to reduce their energy sales through customer-oriented programs. The cost of the programs will be recovered through a surcharge imposed upon customers. The EE Rules are the latest in a series of Commission ordered rules that are intended to change the way (i) utilities provide electric service; and (ii) customers and consumers pay for electricity. For example, in recent years, the

¹ The Companies have fully participated in the workshops leading up to the submission of the EE Rules. The Companies incorporate by this reference their Comments filed in the matter of the notice of proposed rulemaking regarding electric efficiency rules on 11-16-2009.

1 Commission has also promulgated separate sets of rules and issued decisions regarding, Demand
2 Side Management, Renewable Energy, Net Metering and Integrated Resource Planning (the
3 “recently implemented Commission Rules.”) While the Companies support the principles behind
4 these rules, there is a growing concern that the rules and decisions are not integrated, their
5 standards may not be reasonably achievable, and as such may create unintended negative
6 consequences for utilities and customers. The Companies believe that it is imperative, and due
7 process requires, that the rulemaking proceeding contemplated by the ROO examine the individual
8 and cumulative economic and operational impact of the EE Rules and the other recently
9 implemented Commission Rules on the utilities and their customers. Accordingly, the Company’s
10 request that the ROO be amended to require that the impact of the EE Rules and other recently
11 implemented Commission Rules be examined in an evidentiary hearing during the rulemaking
12 proceeding.

13 The EE Rules, as presently proposed, will infringe upon the Companies right to a
14 reasonable opportunity to recover their fixed costs and earn a return on their investment. The
15 Companies’ rates were approved by the Commission premised on fixed utility costs being
16 recovered, in part, through variable energy (kilowatt hour) sales. The EE Rules would mandate
17 that the energy sales be reduced without any mechanism to compensate for any resultant shortfalls
18 of fixed cost recovery. To the extent that the reduced energy sales produce a cost recovery
19 shortfall, the EE Rules would be confiscatory. To remedy this fatal flaw, the Companies have
20 proposed a straightforward fixed cost recovery deficiency mechanism that would operate in
21 between each utility’s respective rate cases. Consequently, the Companies’ request that the ROO
22 be amended to include the following provision in the EE Rules for the fixed cost recovery
23 deficiency mechanism proposed by the Companies:

24 “An affected utility shall file within 90 days of approval of this
25 standard a Fixed Cost Recovery Rate supporting the per kWh cost
26 recovery shortfall created by reduced kWh sales due to DSM/EE
27 programs. This Fixed Cost Recovery Rate will be equal to the
non-fuel-related variable rate approved by the ACC in the Utility’s
most recent rate case. The Fixed Cost Recovery Deficiency

1 calculation shall multiply the Fixed Cost Recovery Rate by the
2 cumulative kWh sales reductions due to DSM/EE since the
3 Utility's last rate case. Both the Fixed Cost Recovery Rate and the
4 cumulative DSM/EE sales reductions shall be reset coincident with
5 the effective date of applicable changes to the Utility's rates. The
6 affected utility shall recover the Fixed Cost Recovery Deficiency
7 through the annual true-up of the affected utility's DSM adjustor
8 mechanism."

9 The Companies reserve their rights to raise other issues and propose further modifications
10 to the EE Rules in the proposed rulemaking docket and any additional proceedings that may arise
11 there from. For example, the Companies are concerned that the current language in the ROO does
12 not allow for a proper ramp up of an energy efficiency standard. Immediately requiring a 2%
13 standard the first year in 2011 is problematic, particularly where the generally accepted ramp up is
14 ¼ to ½ percent per year. Additionally, the EE Rules do not, but should, allow for Demand
15 Response programs to be considered in the standard.

16 THEREFORE, the Companies request that the Commission amend the ROO and draft EE
17 Rules as set forth in these exceptions.

18 RESPECTFULLY SUBMITTED this 11th day of December 2009.

19 Tucson Electric Power Company and
20 UNS Electric, Inc.

21 By



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1 Original and 13 copies of the foregoing
2 filed this 11th day of December 2009 with:

3 Docket Control
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7 Copy of the foregoing hand-delivered/mailed
8 this 11th day of December 2009 to:

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